Chapter 9

ARTICLE 5 - ADVANCE DIRECTIVES AND DO NOT RESUSCITATE ORDERS

Effective July, 2006

99020 Policy

The California Department of Corrections and Rehabilitation (CDCR) recognizes that an inmate has the fundamental right to control decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn. The CDCR shall provide general information to all inmates about the use of advance directives (AD).

99020.1 Purpose

The purpose of this article is to inform inmates that they have the right to make decisions about their health care; may use advance directives to document these decisions; may execute a power of attorney for health care; and may appoint an eligible person to make health care decisions for them should they become incapacitated.

99020.2 Definitions

The following definitions shall apply to this article.

"**Advance Health Care Directive**" or "**Advance Directive**" means either an individual health care instruction or a power of attorney for health care.

"**Agent**" means an individual designated in a power of attorney for health care to make a health care decision for the principal, regardless of whether the person is known as an agent or attorney-in-fact, or by some other term. "Agent" includes a successor or alternate agent.

"**Capacity**" means a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of proposed health care, the ability to understand its significant benefits, risks, and alternatives.

"**Conservator**" means a court appointed conservator having the authority to make a health care decision for a patient.

"Do-Not-Resuscitate Order" means a written order, which directs that resuscitation efforts (i.e., intubations and assisted mechanical ventilation, cardiac compression, defibrillation, and administration of cardio-tonic drugs) not to be initiated in the event of cardiac and/or respiratory arrest.

"Effective Communication" is the means by which information is translated and is understood by the intended party through speech, signals, or writing. The method of communication, which may include auxiliary aids, shall be determined on a case-by-case basis and shall be documented when utilized for health care contacts.

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition.

"**Health care decision**" means a decision made by an inmate-patient, or the inmate-patient's agent, conservator, or surrogate, regarding the inmate-patient's health care, including the following:

- Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication.
- Directions to provide, withhold, or withdraw artificial nutrition, hydration, and all other forms of health care, including cardiopulmonary resuscitation (CPR).

"Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by the law of this state to provide health care in the ordinary course of business or practice of a profession.

"**Individual health care instruction**" means a patient's written or oral direction concerning a health care decision for the patient.

"**Inmate**" means an adult inmate under the jurisdiction of the CDCR.

"**Licensed health care facility**" means a health care facility licensed by the California Department of Health Services, and includes Correctional Treatment Centers (CTC), Skilled Nursing Facilities (SNF), and General Acute Care Hospitals (GACH), and other facilities included in California Health and Safety Code § 1250.

"**Patient**" means an adult inmate whose health care is under consideraton, and includes a principal under a power of attorney for health care and an adult inmate who has given an individual health care instruction or designated a surrogate**.**

"**Physician**" means a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California.

"**Primary Care Physician**" means a physician, nurse practitioner, or physician assistant designated to have primary responsibility for the patient's health care or, in the absence of a designation or if the designated physician is not reasonably available or declines to act as primary physician, a physician who undertakes the responsibility.

"**Principal**" means an adult who executes a power of attorney for health care.

"Power of Attorney for health care" means a written instrument designating an agent to make health care decisions for the principal.

"Reasonably available" means readily available to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

"Supervising health care provider" means the Chief Medical Officer or other designated Physician Manager.

"**Surrogate**" means an adult, other than an inmate-patient's agent or conservator, authorized to make a health care decision for the inmate-patient.

99020.3 Promoting the use of Advance Directives.

Information and forms concerning AD will be provided/available to the inmate population in designated locations in the institutions (*e.g.,* clinics, law library, CTC).

99020.4 Designation of Agents

The inmate-patient may choose a family member or close friend who is available and agreeable to assume the responsibility as an agent. If possible, the inmate-patient should get the consent of the potential agent before that person is designated and discuss his or her wishes with the agent in advance.

Supervising health care providers and CDCR employees (unless related to the inmate-patient by blood, marriage, or adoption, or is a registered domestic partner of the inmate-patient), may not serve as an inmate-patient's agent.

99020.4.1 Consent to Disclosure

A person then authorized to make health care decisions for an inmate-patient has the same rights as the inmate-patient to request, receive, examine, copy, and consent to the disclosure of any medical or other health care information as long as:

- The information is necessary to carry out his/or her duties.
- The person is not specifically excluded in an AD from doing so.

99020.4.2 Priority of Agents

An available agent has priority over any other person in making health care decisions, except where a surrogate has been designated. If a surrogate has been designated, the surrogate has priority over any other person, including a designated agent. If a court appoints a conservator for an inmate, CDCR shall comply with applicable court orders and/or mandates.

99020.4.3 Agent Revocation

An inmate-patient, having capacity, may revoke the designation of an agent by a signed writing or by personally informing the supervising health care provider.

99020.5 Designation of Surrogates

An inmate-patient may designate another adult as a surrogate to make health care decisions by personally informing the supervising health care provider. The health care provider shall promptly record the oral surrogate designation in the inmate-patient's health care record. A surrogate designation is only effective during the course of treatment for an illness or during the stay in the licensed health care facility when the designation is made or for sixty days, whichever period is shorter.

Supervising health care providers and CDCR employees (unless related to the inmate-patient by blood, marriage, or adoption, or is the registered domestic partner of the inmate-patient) may not serve as an inmate-patient's surrogate.

A surrogate must act in accordance with the inmate-patient's known desires or the surrogate's determination of the inmate-patient's best interests.

99020.5.1 Surrogate Revocation

An inmate-patient, having capacity may disqualify another person at any time, including a member of the inmate-patient's family, from acting as the inmate-patient's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

99020.6 Revocation of an AD

An inmate-patient having capacity may revoke all or part of an AD in any manner that communicates intent to revoke, except the designation of an agent, which must be revoked in writing or by personally informing the supervising health care provider of the disqualification.

99020.7 Non-original copies of an AD

A copy of a written AD, revocation, or designation/disqualification of a surrogate, has the same effect as the original.

99020.8 Conflicting Advance Directives

A later AD that conflicts with an earlier AD revokes the earlier AD to the extent of the conflict.

99020.9 Verbal Health Care Decisions or Instructions

When an inmate-patient verbally expresses a health care decision or instruction to a health care staff person, the health care staff person shall ensure that the specific decision or instruction is documented appropriately.

Additionally, the health care staff person shall inform the inmate-patient of the AD process. If the inmate-patient wishes to complete an AD, the health care staff person shall provide the inmate-patient with the CDCR Form 7421, Advance Directive, and assist the inmate-patient in its preparation as necessary.

99020.10 Declining to comply with an Advance Directive, Health Care Decision or Instruction

Health care providers may decline to comply with an inmate-patient's AD, health care decision or health care instruction for such reasons as:

- Reasons of conscience.
- The AD health care decision or instruction is contrary to the CDCR policy.
- The AD health care decision or instruction requires medically ineffective health care and is contrary to health care standards.

A health care provider that declines to comply with an AD health care instruction or health care decision shall do all of the following:

- Promptly inform the inmate-patient, if possible, and any agent or surrogate authorized to make health care decisions for the inmate-patient of the decision.
- Document the decision in the inmate-patient's health record.

99020.11 Health Care Providers Responsibility

Health care providers caring for an inmate-patient shall:

- Request a copy of the AD for inclusion and maintenance in UHR.
- Communicate the health care decision and the identity of the person making the decision to the inmate-patient prior to implementation, if possible.
- Record the existence of an AD, revocation, or designation of a surrogate in the inmate-patient's UHR.
- Comply with an inmate-patient's health care instruction.
- Comply with the reasonable interpretation of the health care decisions made by the person authorized to make those decisions on behalf of the inmate-patient.

99020.12 Institution Staff Responsibility

The responsibilities of institutional staff concerning an AD are as follows:

Health Care Manager (HCM) or **Chief Medical Officer** (CMO) or designee shall ensure CDCR Form 7421 and instructions are provided for each inmate-patient as part of the admission procedure to any CDCR licensed health care facility.

Health Care Staff shall ask upon admission of an inmate-patient to a CDCR licensed health care facility, if an AD has ever been completed, either in California or any other state.

- If an AD has been completed, the health care staff shall:
    - Verify whether a current copy is in the UHR.
    - Notify the primary care provider.
    - Review the AD with the inmate-patient to determine if it is still current.
    - File a copy of the document in the inmate-patient's inpatient health care chart and ensure that the original document is filed in the inmate-patient's UHR.
- If an AD has not been completed the health care staff shall:
    - Explain the benefits of completing an AD.
    - If the inmate-patient wishes to complete an AD, the health care staff person shall give the inmate-patient the CDCR Form 7421.

- Provide assistance to the inmate-patient, if necessary, for completion and understanding of the CDCR Form 7421.
- Notify the physician staff of the CDCR Form 7421.
- File a copy of the CDCR Form 7421, in the inmate-patient's inpatient health care chart and ensure that the original document is filed in the inmate-patient's UHR.

If the inmate-patient chooses not to complete an AD, health care staff shall document the offering and explaining the AD to the inmate-patient in the UHR.

99020.13 Screening for Effective Communications, Mental Health, Developmental Disability, and Physical Disability

For CDCR Form 7421 submitted by inmate-patients housed in a non-licensed bed, the HCM or designee shall review and screen the AD submitted by inmates as follows:

- HCM/designee shall review the institutions' roster of inmates who have Effective Communication (EC) needs.
- HCM/designee will complete the screening portion of CDCR Form 7421 identifying the inmate as one of the following:
    - No EC assistance needed.
    - Identify the type of EC assistance needed.
    - Mental Health, identified level of care.
    - Developmental Disability, identify designation.
    - Physical Disabilities, identify disability.
- If during screening it is determined that assistance is necessary, the HCM/designee will interview the inmate-patient with the CDCR Form 7421 to determine whether or not they understand the form. The HCM/designee shall document his/her findings.
    - If through the interview, the HCM/designee determines the inmate needs assistance with understanding the medical aspects of the CDCR Form 7421, the HCM/designee shall provide the needed assistance and will document the assistance provided on the form.
    - If the inmate-patient understands the medical aspects of the CDCR Form 7421, the HCM/designee shall forward the document to the Health Records Technician II (HRT-II).
    - If the inmate-patient does not understand the CDCR Form 7421, due to mental health concerns, the HCM/designee shall refer the inmate-patient to the Chief Psychiatrist or designated mental health care professional. The Chief Psychiatrist or designated mental health care professional will ducat the inmate patient, meet with him/her to determine whether or not the inmate has the mental capacity to make a decision regarding future health care, advise the inmate-patient of their decision, and document it on the CDCR Form 7421.
    - Upon completion, the mental health care professional will return the CDCR Form 7421 to the HRT-II.
    - If the mental health care professional determines that the inmate does have the mental capacity to make the decision, the mental health professional will return the CDCR Form 7421. The HRT-II will then forward the form to the institution notary for further processing (i.e. verification of inmate identity and signature, notary public signature, and placement of official seal).

- If the mental health care professional determines that the inmate does not have the mental capacity, the HRT-II will file the document in the UHR, stamping the CDCR Form 7421 as INVALID in red ink, without further processing.

The HRT-II will process the CDCR Form 7421, as follows:

- The HRT-II shall maintain a tracking log of all AD.
- If no assistance is required to the inmate submitting an AD, the HRT-II shall request notary services to notarize the inmate-patient signature on the CDCR Form 7421.
- Upon completion, the notary will return the CDCR Form 7421 to the HRT-II who will log its receipt and place it in the inmate-patient's UHR.
- The HRT-II shall process the CDCR Form 7421 within 30 days of receipt.

99020.14 Prerequisites for a Valid Written CDCR Form 7421

All of the following criteria must be met in order for a CDCR Form 7421 to be legally sufficient.

- The AD must be signed by the inmate-patient.
- The signature must be dated.
- The AD must be notarized.
- The AD must comply with all requirements for agents (See §99020.4), if an agent is designated.

The use of a particular AD form is not necessary, and if a form is used, it is valid even if it has been changed and/or only partially completed. If the AD is executed and valid in another state or jurisdiction, it shall be enforceable to the same extent as an AD validly executed in California.

99020. 15 Filing the AD in the UHR

Upon receipt of a valid AD, health records staff shall file it in the health record, flag the health record by stamping the cover "ADVANCE DIRECTIVE," and inserting a yellow sheet of paper in the green section (labeled "Medico-Legal"). The yellow sheet shall be clearly marked in red ink with the statement "This Record Contains an Advance Health Care Directive." A copy of the document shall be filed in the most current volume of the UHR.

99020.16 Do Not Resuscitate Order

CPR shall be initiated in all cases of cardiac and/or respiratory arrest except when a valid Do Not Resuscitate (DNR) order has been properly documented in the inmate-patient's UHR.

If an inmate-patient has capacity and wishes to have resuscitation measures initiated, that desire shall be followed. If an inmate-patient has capacity and decides to have resuscitation measures withheld, that desire should be followed. If an inmate-patient does not have capacity, a decision regarding the use of CPR shall be made by an agent or surrogate based on previously expressed desire of the inmate-patient. The treating physician shall seek the concurrence of the inmate-patient or the agent or surrogate before writing a DNR order.

A DNR order may be written in the UHR when, in the treating physician's judgment, an inmate-patient is terminally ill and no reasonable treatment for the underlying disease process remains available. The decision to write a DNR order shall be made by the treating and/or designated physician and shall be based on:

- The right of the patient or his/her surrogate decision-maker to refuse medical care, even when it could prolong life; and

- The medical judgment that the potential benefits of resuscitation, assessed in context of the inmate-patient's total medical condition, no longer justify initiation of resuscitation efforts.

A DNR order shall be implemented with the understanding that every effort shall be made to relieve the patient's suffering and maintain comfort. A DNR order does not imply that other therapeutic measures necessary to promote comfort should not be provided (e.g., palliative treatment for pain, dyspnea, major hemorrhage, or other medical conditions).

The treating physician shall be responsible for determining whether an inmate-patient is capable of making health care decisions and discussing the possibility of cardiopulmonary arrest. The physician shall describe the procedures performed during CPR, including the likelihood of success and the potential adverse consequences, and encourage the inmate-patient to express whether he/she would prefer resuscitation to be performed. These discussions should be initiated as early as possible during hospitalization or placement in a CDCR licensed health care facility. If there is a question concerning an inmate-patient's capacity to make informed health care decisions, the treating physician shall request a psychiatric consult.

If the inmate-patient is unable to communicate informed health care decisions, or lacks capacity to make health care decisions, and has not designated an agent or surrogate either orally or via an AD, the treating physician shall work with the Office of Legal Affairs to identify an appropriate surrogate. The physician shall advise the surrogate of the inmate-patient's diagnosis and prognosis, and request that a decision be made on behalf of the inmate-patient regarding the initiation of CPR.

99020.16.1 Documentation

The treating physician shall write the DNR order on the Physician's Order sheet in the inmate-patient's UHR, and briefly state the inmate-patient's terminal diagnosis. Additionally, the physician shall document the following in the patient progress notes:

- The medical diagnosis and prognosis at the time the order is written.
- The current mental and physical status of the inmate-patient at the time the order is written.
- The name of the agent or surrogate (if designated) and the relationship to the patient.
- A statement indicating the benefits, burdens, and risks of CPR, as well as the probable chances of successful outcome were discussed with the inmate-patient (or agent or surrogate if appropriate).
- Documentation of consultations with other physicians.
- A statement indicating the patient, or the agent, or surrogate concurs with the decision to withhold CPR in the event of cardiac and/or respiratory arrest.

If an inmate-patient requests that resuscitation measures be limited to specific interventions, the physician shall identify the intervention to be withheld, as well as the interventions to be initiated, on the Physician's Order sheet in the inmate-patient's UHR.

99020.16.2 Telephone Orders

Physician telephone orders to withhold CPR are acceptable when witnessed by one Registered Nurse and one other health care staff person who is not related to the inmate-patient. Both staff persons must sign the telephone order. Within 24 hours, the physician giving the telephone order shall co-sign the order sheet and document in the inmate-patient's progress notes the rationale for the DNR order, and that the decision was discussed with the inmate-patient or surrogate decision-maker prior to writing the order. If the telephone order is not co-signed by the treating physician within 24 hours of issuance, it shall automatically be discontinued.

99020.16.3 Periodic Review

In licensed CDCR beds the treating physician shall review the DNR order at least monthly and whenever a change in the inmate-patient's condition occurs. In those cases where the inmate-patient's condition or prognosis improves, the treating physician shall reopen discussion with the inmate-patient, agent, or surrogate and update or reverse the DNR order in accordance with the inmate-patient's wishes. The physician shall document any modification to the DNR order and supporting rationale in the inmate-patient's UHR.

99020.16.4 Anesthesia and Surgery

In CDCR licensed beds, the treating physician or other designated Primary Care Physician (PCP), shall be responsible for discussing and documenting whether a DNR order is to be maintained, or completely or partially suspended, during anesthesia and surgery. Discussions with the inmate-patient, agent, or surrogate should include:

- The goals of surgery.
- The possibility of cardiopulmonary arrest.
- A description of the procedures performed during CPR.
- Possible outcomes with and without CPR.

The treating physician shall document the inmate-patient's decision regarding the continuation or suspension of the DNR order during anesthesia and surgery in the UHR and communicate the inmate-patient's wishes to all health care providers potentially involved in the surgical procedure. If the inmate-patient requests that the DNR order be suspended during anesthesia and surgery, the physician or designated PCP, shall document when the order is to be reinstated.

99020.16.5 Accepting a DNR Order from another CDCR Institution

If a terminally ill inmate-patient with a DNR order transfers to another CDCR institution, the receiving institution may accept the sending institution's DNR order on a temporary basis. A physician at the receiving institution must discuss the resuscitation status with the inmate-patient within 72 hours of the inmate-patient's arrival and rewrite the DNR according to the inmate-patient's desires.

99020.16.6 Rescinding a DNR Order

The inmate-patient or surrogate decision-maker may rescind a DNR order at any time by simply informing health care staff of the desire to cancel the order. The cancellation becomes effective as soon as the inmate-patient, agent, or surrogate communicates his/her desire to rescind the order to health care staff. Health care staff who receive notification of an inmate-patient's desire to cancel a DNR order shall notify the treating physician immediately. The treating physician shall make a notation regarding the cancellation of the order on the Physician's Order sheet and patient progress notes in the inmate-patient's UHR. Following cancellation of a DNR order, full CPR shall be initiated in the event of cardiac and/or respiratory arrest.

99020.16.7 DNR Instructions Given to a Non-Health Care Staff Person

Any non-health care staff person (*i.e.,* clerical staff, administrative staff, correctional officer, *etc.*) who receives oral or written DNR instruction from an inmate-patient shall promptly notify the Supervising Registered Nurse. The Supervising Registered Nurse shall confirm the patient's request and immediately notify the patient's primary care provider, the physician on call, the Medical Officer of the Day, or the Health Care Manager/designee. The notified health care staff member shall ensure that a DNR order is promptly implemented or rescinded in accordance with the inmate-patient's wishes. Health care staff shall document all

DNR instructions in the inmate-patient's UHR. This includes oral instruction given to a non-health care staff person concerning the use of resuscitation measures and designation of a surrogate.

99020.17 Authorizing Anatomical Gifts

Inmate-patients or their appointed agents may authorize post-mortem (after death) tissue or organ anatomical gifts. The HCM or CMO shall promptly notify the local donor agency of the decision to authorize tissue or organ anatomical gifts.

CDCR shall not be responsible for any costs associated with the organ donation process.

99020.18 Revisions

The Director of the Division of Correctional Health Care Services or designee is responsible for ensuring that the contents of this article are kept current and accurate.

99020.19 Reference

Family Code, §7002

Health & Safety Code § 1250

Probate Code, §§3200, 3201, 4605, 4607, 4609, 4617, 4621, 4623, 4629, 4643, 4674(c)(1), 4701(5.3), and 4711.

Welfare and Institutions Code §5325

CCR, (15) (3), §§3000, 3351 and 3353.1